
**LABOR
COMMISSION
STATE OF UTAH**

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ON - THE - JOB

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In One Split Second.....

In One Split Second.....



Reflect a minute on your commute to work this morning. Remember some of the random thoughts that were going through your mind? If you were like I was, you might have been thinking about what would await you once you arrived and what you needed to accomplish before the workday was over. Or, you might even have been thinking further down the road. Do you have a basketball team to coach for your son tonight? Or

maybe your daughter will need a ride to dance, or help with a school project. And then there are always those countless errands and chores that await you once the workday is over.

Did you ever once think during today's commute that perhaps your life might change in a split second and none of the things you were considering would ever come to pass? Of course not. None of us believe we will ever be the victim of a workplace accident. "Sam" didn't either. Unfortunately, Sam was wrong.

Sam started his workday as he had every day for the past 20 years. Since the age of 29, Sam had worked at the same power generation facility. His job was certainly not considered dangerous and he was well experienced at his responsibilities. Part of his normal duties included performing routine

maintenance on some of the equipment.

"None of us believe we will ever be the victim of a workplace accident. "Sam" didn't either. Unfortunately, Sam was wrong."

On this particular day, Sam was working on an elevating man-lift in the company's shop. He was working on top of the equipment about seven feet above ground level with his back toward the open edge

of the equipment. As Sam rose to a standing position, he fell backwards, over the edge to the cement floor below. He sustained major head, shoulder, and knee injuries.

Sam's daily routine changed quickly. Following time spent in the hospital and many countless hours of pain and worry, three months later, he is still having problems with his balance due to the head injury. The doctors are still not willing to release him back to work at this time. He feels "lucky" in that the doctors say he should not have any permanent effects from the fall. However, in three month's time, his wife and family have been included in his suffering. Even with

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workers' compensation insurance which his employer carried, his finances will take months, maybe years, to recover.

What was learned from this unfortunate experience?

When Utah Occupational Safety & Health (UOSH) investigated the accident, the inspector found there were nine employees at Sam's place of employment who each access these pieces of equipment for routine maintenance approximately once a month. The height of each piece of equipment varies from seven to 10 feet. The company had no policies in place to protect employees from falls when they are working in situations such as the one resulting in Sam's injuries. UOSH determined that the location Sam was working from was a platform and issued a citation for not protecting open-sided platforms with standard guardrailing, or another effective means of fall protection. UOSH standards state:

1910.23(c)(1)

Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing

(or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides.

OSHA STD 01-01-13 provides direction on the applicability of 29 CFR 1910.21(c)(1) (fall protection of open sided floors or platforms) to situations such as this. Under the Directive, the elevated surface which the Employee was working from would be considered to be a "platform." A platform is interpreted to be any elevated surface designed or used as a walking or working surface, and any other elevated surface upon which employees are or allowed to walk or work while performing assigned tasks on a predictable and regular basis. An Employee's functions are considered to be on a predictable and regular basis if they are performed at least once every 2 weeks, or for a total of 4 man-



hours or more during any sequential 4-week period. The frequency of the maintenance activities at the facilities is important because it exceeds the number of times required to meet the definition of regular and predictable basis. With nine employees performing maintenance activities on elevated surfaces once per month, the average would be a little over two times per week.

"Sam was very fortunate not to lose his life or suffer extensive permanent damage. However, I doubt he would consider himself "lucky" when considering the pain, suffering and financial loss he and his family have suffered as a result of this accident."

Taking this information into consideration, 29 CFR 1910.23(c)(1) would apply, requiring open sided platforms to be protected with standard guardrail, or as otherwise interpreted, by another effective means of fall protection. UOSH

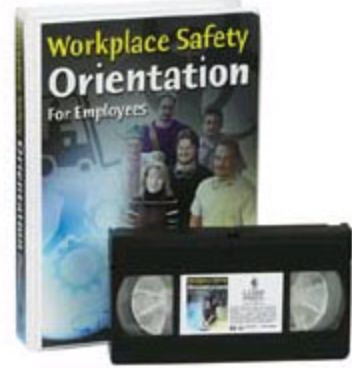
issued a citation and worked with the employer to correct this situation to prevent further accident and injury.

Sam was very fortunate not to lose his life or suffer extensive permanent damage. However, I doubt he would consider himself "lucky" when considering the pain, suffering and financial loss he and his family have suffered as a result of this accident.

UOSH standards exist for the safety of all of us. Employers with 250 employees or less may contact our office for a consultation offered without citations or penalties and at no-cost which will identify limited or comprehensive workplace hazards, provide industrial hygiene sampling, a safety and health program review, and identify specific safety and health training for your workers and management. Please contact our Consultation office at (801) 530-6855 or visit our website at www.uosh.utah.gov
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Safety Video Library



You may not be aware that the Utah Safety Council lends safety and health awareness videos to members at no cost. The fee for non-members is \$25. The majority of the occupational safety presentations in the library have been made possible through a grant by the Utah Labor Commission. The grant also provides funding to maintain and operate the library. Many traffic safety presentations have been made available through a grant from the Utah Highway Safety Office. Videos are reserved on a first-come, first-served basis. Any shipping charges associated with video loans will be invoiced to the user, which is a nominal cost. If an individual picks up and returns the videos directly to the Utah Safety Council, there is no shipping charge.

More than 800 available safety and health videos can be used for training employees and employers during safety or other meetings. The videos deliver practical strategies and techniques to safeguard individuals from potentially hazardous situations that are encountered as part of a number of activities performed on a daily basis. Much of the success of any safety program can be gauged by its training methods. Most effective safety training programs make use of visual aids that dramatize lively and highly relevant case histories of occupational, traffic, home, and recreational hazards, and offer constructive advice for assertively minimizing or eliminating their occurrence.

Videos are categorized into areas of interest. Each category lists films by production date to give the user some indication as to the timeliness of material. When new OSHA standards are adopted, every attempt is made to get current and up to date videos on that topic. Each video in the catalog has been included due to its relevance pertaining to the safety and health messages.

The following is a sample and not all inclusive of

some of the topics in their catalog:

- ❖ Fire
- ❖ Back Injury
- ❖ Lifting and Ergonomics
- ❖ Chemicals and Hazardous Materials
- ❖ Confined Space
- ❖ Cranes and Rigging
- ❖ Electrical Safety
- ❖ Forklift Trucks
- ❖ Metal Cutting and Forming
- ❖ Personal Protective Equipment
- ❖ Substance Abuse
- ❖ Office
- ❖ Construction
- ❖ Off-the-Job
- ❖ Alcohol
- ❖ Bicycle
- ❖ Defensive Driving and Road Rage
- ❖ Transportation Safety
- ❖ Winter and General Safety

The Utah Safety Council also has the "Take Safety Seriously" commercials and the two half-hour Utah Labor Commission programs produced by Channel 13 "Fox" and Channel 4, the ABC affiliate in Salt Lake City.

For a complete list of resources available, or to request The Utah Safety Council Audio Visual Catalog (free of charge) contact:

The Utah Safety Council
1574 W 1700 S, Suite 2A
Salt Lake City, Utah 84104

Call 478-7878 within Salt Lake City.
Outside the Salt Lake Metro area call toll-free
(800) 933-5943.

Information is also available at their website:
www.utahsafetycouncil.org

In One Split Second.....

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For larger employers, Compliance Assistance Specialists can provide information regarding OSHA standards and are available for seminars, workshops, and speaking events. Contact Compliance Assistance at (801) 530-6860 or visit our website at www.uosh.utah.gov

Federal OSHA may also be consulted for safety standards and can be accessed at www.osha.gov

The Case of the Elusive Payday



By Brent Asay, Manager, Employment Standards Bureau

Two recent customer inquiries received by the Employment Standards Bureau have raised questions regarding the application of standards on pay periods set forth in the Utah Payment of Wages Act.

The first question raised concerns a payday where there is a discrepancy between the amount of wages earned and the amount of wages paid to an employee in connection to a completed pay period. If neither the employer nor the employee disputes the amounts, when should the employer correct the discrepancy? Second, what is the proper timing of an employer changing the payday?

When An Employer Should Correct Wage Payment Discrepancy

The relevant standards set forth in the Utah Payment of Wages Act are: Utah Code Sections 34-28-3(1)(a)-(b): “An employer shall pay the

wages earned by an employee at regular intervals, but in periods no longer than semi-monthly on days to be designated in advance by the employer as the regular payday. An

employer shall pay for services rendered during each pay period within ten days after the close of the period.”

Utah Code Section 34-28-3(1)(e): “All wages shall be paid in full to the employee”

Utah Code Section 34-28-7: “Nothing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts or in full when or before due. . . .”

When the employer should correct the wage payment discrepancy depends on whether the employee has been underpaid or overpaid wages for the completed pay period. If the employee has been overpaid by some amount for a given pay period, the employer can correct the discrepancy on the next payday. In such instance there is assurance

“When the employer should correct the wage payment discrepancy depends on whether the employee has been underpaid or overpaid wages for the completed pay period.”

the employee was paid wages in full for the completed pay period, in conformity to Utah Code Section 34-28-3(1)(e), and, this is consistent with Utah Code Section 34-28-7, which provides that the employer is not prohibited from paying wages in greater amounts when or before the wage payment is due. However, adjustment by the employer on the next payday that corrects the discrepancy is necessary as the employee is entitled to no more than the agreed-upon rate of pay. Of course, the employer should notify the employee of the overpayment and that he or she can expect the adjustment on the next payday.

On the other hand, if what is involved is a discrepancy of the employee being underpaid wages for a given pay period, the employer must fix the error immediately.

Otherwise, the employer is violating the statutory provisions that an employee be paid, in full, the wages he or she earned in a pay period within ten days after the close of that pay period--or sooner if the designated payday falls less than 10 days after close of the pay period.

The Proper Timing of a Designated Payday Change

In addition to the provisions of the Utah Payment of Wages Act cited above, Utah Code Section 34-28-4(1) also applies to the question of the proper timing of a designated payday change. It provides: "It shall be the duty of every employer to notify his employees at the time of hiring of the day and place of payment. . . and of any change to any of these items prior to the time of the change. . . ."

A Utah private employer can change its designated paydays, but subject to the following parameters based on the relevant provisions of the Utah Payment of Wages Act:

Payday must occur no later than 10 days after the close of the pay period, and the employer must have a designated payday--a designated calendar day--in connection with each pay period. Whatever calendar day the employer designates as payday within the allowable 10 days after close of the pay

period, that is when payday must occur. The employer does not have the ability under law to miss the designated payday and stretch it to the 10th day after close of the pay period. This is not a concern, however, if the employer has previously designated the 10th day after close of the pay period as payday.



Since under the Utah Payment of Wages Act, designated paydays are timed in relation to established pay periods, and the employee's expectations are set on both the designated payday and established pay periods, we expect the employer to give its employees advance notice of a change in payday **before** the start of a first pay period linked to the newly designated payday. So, if the employee is already into day one of a current pay period tied to a designated payday, the employer must honor that designated payday, and if it wants to change the payday, it

can, but the newly designated payday cannot be applied to the current pay period, and can only become effective in connection with the next pay period as long as it has given advance notice of the same to its employees.

The Employment Standards Bureau of the Utah Labor Commission enforces all Utah laws addressing:

- **Wage claims**
- **Employment of minors**
- **Utah's minimum wage**
- **Payday requirements**
- **Wages/severance upon termination**
- **Legal payroll deductions**
- **Vacation, sick leave & holiday pay policies**

For information contact us at (801) 530-6801 or visit the Utah Labor Commission website:

www.laborcommission.utah.gov

Utah Court of Appeals Decisions

During the last three months, the Utah Court of Appeals has issued decisions in six Labor Commission cases. One of the Court's decisions involved a complaint of national origin discrimination under the Utah Antidiscrimination Act. Five decisions dealt with workers' compensation or occupational disease claims.

In *Tarkeshian v. Labor Commission*, (Case No. 20040996-CA; issued October 14, 2005), the Court of Appeals' unpublished memorandum decision affirmed the Commission's ruling that Mr. Tarkeshian's employer did not violate the Utah Antidiscrimination Act by discriminating against Mr. Tarkeshian because of his national origin. Specifically, the Court upheld the Commission's conclusion that the employer had legitimate, non-discriminatory reasons for not promoting Mr. Tarkeshian.

The Court of Appeals' published decision in *Ameritemps v. Labor Commission*, (Case No. 20040953-CA; filed November 10, 2005.), carefully considered whether the Commission's preliminary determinations of permanent total disability are "final agency actions" so as to be reviewable by appellate courts. The Court of Appeals concluded that they are. The Court also upheld the Commission's substantive determination that the injured worker was, in fact, permanently and totally disabled.

In *Wood v. Labor Commission*, (Case No. 20040977-CA; Filed November 10, 2005) the Court of Appeals considered a matter of first impression.

Under section § 34A-3-106(2) of the Occupational Disease Act, a claimant must prove his or her work-related mental stress was "extraordinary" when compared to "contemporary national employment and nonemployment life." The Commission's Appeals Board denied Mrs. Wood's claim on the grounds her work-related stress was not "extraordinary." In reviewing the Appeals Board's decision, the Court of Appeals concluded that the Board may have failed to compare Mrs. Wood's work-related stress to contemporary national standards, as required by § 34A-3-106(2). The Court therefore remanded the matter to the Board for that purpose.

Finally, the Court of Appeals issued unpublished memorandum decisions in three workers'

compensation cases:

In *Biers v. Labor Commission* (Case No. 20041018-CA, filed December 22, 2005) the Court rejected Mr. Biers' allegations of denial of due process and equal protection.

In *Braegger v. Labor Commission*, (Case No. 20040825-CA, filed November 10, 2005), the Court upheld the Commission's determination that Mr. Braegger's work accident was not the direct cause of his disability. The Court also held that the Commission's decision was sufficiently detailed and that the Commission had properly declined to refer Mr. Braegger's claim to a medical panel.

In *Morgan v. Labor Commission*, (Case No. 20052026-CA, filed January 6, 2006), the Court summarily dismissed Morgan's appeal as presenting no substantial question that warranted the Court's consideration.



The “Rules Corner”

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



R612-4-2 Industrial Accidents	Premium Rates for UEF and ERF. Continues existing premium rates for Employers’ Reinsurance Fund at 7.25% and Uninsured Employers’ Fund at .25%	Discussed at Advisory Council and Open Public Meeting. Published November 1, 2005. Effective January 1, 2006.
R612-2-10 Industrial Accidents	HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers: Pursuant to legislation enacted last year, transfers procedures and standards for HIV and Hepatitis testing and reporting to the Commission’s Industrial Accidents Division.	Discussed at Advisory Council and Open Public Meeting. Published November 1, 2005. Effective December 2, 2005.
R602-2-3 Adjudication	Medical Panels: Increases compensation for physicians serving on the Commission’s medical panels.	Published October 15, 2005. Effective November 15, 2005.
R608-1-8 UALD	Fair Housing Procedure: Reduces time for responding to Fair Housing complaints from 20 days to 10 days.	Effective October 7, 2005.
Rule 616-2-3 Rule 616-3-3 Safety	Engineering Codes: Adopts recent amendments to ASME Boiler and Pressure Vessel codes and ASME Elevator and Escalator codes.	Published October 15, 2005. Effective January 1, 2006 and February 10, 2006.
R612-2-22 Industrial Accidents	Medical Records: Sets rules for use of medical records in workers’ compensation proceedings, in light of federal HIPAA standards.	Effective July 2, 2005
R612-2-5 Industrial Accidents	Medical Fees: Updates medical fee schedule for workers’ compensation cases. Increases fees in “evaluation & management” and “physical medicine categories.	Effective July 2, 2005

Rules are discussed and considered in an open public forum prior to adoption by the Utah Labor Commission. For information regarding our Open Meetings, or to be placed on the mailing list for notification of the Open Meeting, please contact Robyn Barkdull at (801) 530-6815 or at rbarkull@utah.gov

Same Old Face, Different Name

In our continuing effort to assist the public and alleviate confusion, the **Safety Division** of the Utah Labor Commission will be changing its name to **Boiler & Elevator Safety Division** which more closely reflects what the division actually does. Currently, we receive many calls regarding workplace safety and accidents which are handled by Utah OSHA. They can be reached at (801) 530-6901 or www.uosh.utah.gov



The Boiler & Elevator Safety Division ensures public and employee safety by inspecting boilers, pressure vessels, and elevators which are essential to modern life but can cause catastrophe if improperly designed, installed, or maintained. The challenge is to apply appropriate engineering and inspection standards to ensure Utahans will not be harmed. Inspectors are trained and remain current with new technologies while participating in the development of national codes governing boilers, pressure vessels, elevators and escalators. All applicable code references are listed in our Compliance Manuals which can be obtained on our website at:

http://laborcommission.utah.gov/Safety_Division/safety_division.htm or by calling our office at (801) 530-6850.